

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNIVERSITAS EDUCATION, LLC,)	
)	
Petitioner,)	
)	
vs.)	NO. FJ-14-0005-HE
)	
AVON CAPITAL, LLC, <i>et al.</i> ,)	
)	
Respondents.)	

ORDER

Petitioner Universitas Education, LLC registered a money judgment with this court. The matter was referred to United States Magistrate Judge Suzanne Mitchell for further proceedings pursuant to 28 U.S.C. § 636(b)(3). After filing a motion for contempt, and renewing that motion, petitioner's counsel moved for and was granted permission by Judge Mitchell to withdraw as counsel of record. After the deadline for entry of new counsel passed without new counsel entering an appearance, Judge Mitchell issued a Report and Recommendation [the "Report"] recommending that the matter be dismissed without prejudice for failure to comply with the court's order.


Respondent/Garnishee SDM Holdings, LLC objected to the Report arguing that the action should be dismissed with prejudice. Petitioner, after a belated entry of appearance by new counsel, also objected to the Report arguing the case should not be dismissed. Petitioner acknowledged that it failed to comply with the court's order in timely fashion and offered to withdraw its motion to compel as a lesser sanction for that violation.

In light of the developments subsequent to the submission of the Report, particularly the entry of appearance by counsel for petitioner, the court concludes the sanction of dismissal is more severe than is warranted on the present showing. However, some sanction for petitioner's violation of the court's deadlines is appropriate and the court therefore **ADOPTS** the report and recommendation to this extent: As a sanction, petitioner's motions for a finding of contempt [Doc. Nos. 40 and 98] are **DENIED**. Further, petitioners will be required to pay respondent SDM Holdings, LLC's reasonable attorneys fees incurred in connection with its objection to the Report [Doc. #128]. The parties are directed to confer and attempt to reach agreement as to the amount of the fees. Absent agreement, SDM Holdings LLC shall file a motion to determine the amount within 30 days. Petitioner shall pay the fees within 21 days after the amount is determined. Absent payment, this case will be subject to dismissal.

This matter is re-referred to Judge Mitchell for further proceedings.

IT IS SO ORDERED.

Dated this 14th day of December, 2018.


JOE HEATON
CHIEF U.S. DISTRICT JUDGE